

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DANIEL J. WILLIAMS, JR.,

Petitioner,

v.

Civil Action No. 5:07CV92
(STAMP)

WAYNE A. PHILLIPS, Warden,

Respondent.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

On July 24, 2007, the petitioner filed an application for habeas corpus pursuant to 28 U.S.C. § 2241, seeking an order directing the Bureau of Prisons ("BOP") to consider his eligibility for transfer to a Community Corrections Center ("CCC")¹ based on the five factors set forth in 18 U.S.C. § 3621 and "without regard to the 10% limitation promulgated by the BOP" The petition was referred to United States Magistrate Judge John S. Kaull for an initial review and submission of proposed findings of fact and recommendation pursuant to Local Rule of Prisoner Litigation Procedure 83.09.

On September 20, 2007, following an order directing the respondent to show cause, the respondent filed a motion to dismiss

¹The BOP now refers to Community Corrections Centers as Residential Release Centers; for purposes of clarity and consistency with the terms used in documents the parties have filed with this Court, this order will continue to refer to the facilities as Community Corrections Centers ("CCCs").

in which he asserted that the petitioner's claims were not ripe for adjudication. The Court issued a Roseboro notice, but the petitioner did not file a response to the respondent's motion. Upon subsequent review of the petition on April 9, 2008, the magistrate judge directed the respondent to file a supplemental response to the petition because, due to the passage of time and the petitioner's pending release date, the petitioner may have been considered for CCC placement by the BOP. The respondent filed a supplemental response on May 9, 2008 in which he confirmed that the petitioner has now been reviewed for CCC placement. The respondent further asserts that the review was properly conducted pursuant to 18 U.S.C. § 3621(b) and that the petition is therefore moot.

Upon review of the petition, motion to dismiss, and supplement to the motion to dismiss, the magistrate judge issued a report and recommendation recommending that the petitioner's § 2241 petition be dismissed as moot. The magistrate judge informed the parties that if they objected to any portion of the report, they must file written objections within ten days after being served with copies of the report. The petitioner did not file objections.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. As to those portions of a recommendation to which no objection is made, a magistrate judge's findings and recommendation will be upheld

unless they are "clearly erroneous." See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Because no objections were filed in this case, the report and recommendation will be reviewed for clear error.

Magistrate Judge Kaul recommends that the petitioner's § 2241 petition be dismissed as moot because the BOP has in fact considered the five factors set forth in 18 U.S.C. § 3621(b) in making the petitioner's CCC referral recommendation. This Court agrees. Inmates are not entitled to six months CCC placement, rather they are entitled to have their placement considered in accordance with the five factors enumerated in 18 U.S.C. § 3621(b). See Jaworski v. Gutierrez, No. 5:06CV157 (N.D. W. Va. Aug. 23, 2007). In this case, a case manager at FCI-Morgantown has averred, in a supplemental declaration attached as Exhibit 1 to the respondent's supplemental motion to dismiss, that she utilized the five factors enumerated in 18 U.S.C. § 3621(b) when reviewing inmate Williams's case file and making a referral recommendation. Because the BOP gave the petitioner's case appropriate consideration under 18 U.S.C. § 3621(b), the petitioner has received all manner of relief to which he is entitled. Therefore, this Court finds no clear error in the recommendation of the magistrate judge.

Accordingly, this Court hereby AFFIRMS and ADOPTS the magistrate judge's report and recommendation in its entirety. The

respondent's motion to dismiss is GRANTED, and the petitioner's §2241 petition is DISMISSED AS MOOT. It is ORDERED that this case be DISMISSED and STRICKEN from the active docket of this Court. Under Wright v. Collins, 766 F.2d 841, 845 (4th Cir. 1985), the petitioner's failure to object to the magistrate judge's proposed findings and recommendation bars the petitioner from appealing the judgment of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the petitioner and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: July 10, 2008

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE